

After reviewing the record and considering the arguments, the Appeals Board finds the Award by the ALJ should be affirmed.

Findings of Fact

1. Claimant was employed by respondent in the mail processing department from July 1988 until she was terminated on December 4, 1996. Her duties included pulling checks and statements out of envelopes, approximately 5,000 per day, and running credit checks on customers requesting cable service. She also ran the day's deposits. The credit checks and deposits were done on a computer keyboard.

2. Claimant underwent bilateral carpal tunnel surgery, performed by Dr. J. Mark Melhorn, in November 1993. After the surgery, Dr. Melhorn released claimant to return to her regular work with a restriction that she rotate her tasks. In 1994, claimant settled a workers compensation claim for these injuries based on a rating by Dr. Melhorn of 10 percent functional impairment to the whole body.

3. Claimant began to experience increased or additional symptoms in both upper extremities in May 1996.

4. Claimant again received treatment from Dr. Melhorn beginning May 21, 1996. In September 1996, Dr. Melhorn again released claimant to her regular work with a recommendation for task rotation. Dr. Melhorn testified he would not assign any additional permanent impairment above the impairment he assigned in 1994. He considered the aggravation in 1996 to be a temporary aggravation. He also testified claimant did not have any additional loss of ability to perform tasks.

5. Claimant was also treated by Dr. Harry A. Morris. Dr. Morris first saw claimant October 21, 1996, for complaints involving the left hand and wrist. His exam findings were negative. After testing, he diagnosed triangular fibrocartilage complex (TFCC) tear which he considered to be a temporary condition. He did not recommend restrictions but indicated that if things began to bother her, restrictions might be given.

6. Dr. Pedro A. Murati saw claimant on October 30, 1997, at the request of claimant's counsel. Dr. Murati diagnosed bilateral carpal tunnel syndrome, bilateral ulnar cubital syndrome, and bilateral posterior interosseous nerve entrapment. Based on claimant's complaints and history, he concluded claimant suffered additional permanent impairment. He combined ratings to both upper extremities to arrive at a whole body impairment of 21 percent. He also recommended the following restrictions:

I recommend work restrictions based on an eight-hour day including occasional repetitive hand controls, no heavy grasping and weight restrictions of 35 pounds occasionally, 20 pounds frequently and 10 pounds constantly.

In his report of October 30, 1997, Dr. Murati states that these restrictions are temporary until claimant reaches MMI. In his deposition, he testified that the restrictions would be permanent if claimant does not receive additional treatment.

Finally, Dr. Murati reviewed the opinions expressed by Mr. Jerry D. Hardin regarding claimant's ability to perform tasks. He agreed claimant has a loss of 33 percent when not time weighted but concluded claimant's loss would be 25 percent on a time-weighted basis.

7. Claimant's employment with respondent was terminated December 4, 1996, when claimant would not work the second shift.

8. At the time of the regular hearing, claimant was working at DataNet doing data entry and earning \$8 per hour.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. The Board concludes the record does not establish by a preponderance of the credible evidence that claimant has suffered additional permanent impairment or disability arising out of and in the course of her employment since the settlement of her original claim in 1994. The Board acknowledges the record contains some evidence of such impairment, and the Board agrees that claimant probably has experienced periods of increased symptoms associated with activity. Nevertheless, based on the testimony of Dr. Melhorn and of Dr. Morris, the Board concludes any new injury has been temporary only and the decision by the ALJ should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish on May 12, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
D. Steven Marsh, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director